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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ZHANG ZIYI, an individual,

Plaintiff,

VS.

CHINA FREE PRESS, INC., a North Carolina non-profit corporation doing business as BOXUN NEWS; WEICAN NULL MENG, an individual known as WATSON MENG and also WEICAN "WATSON" MENG; DOES 1-25, inclusive.

Defendants.

Case No. CV12-5216-DMG (PLAX)

**DEFENDANT'S REPLY IN
SUPPORT OF MOTION FOR
ORDER REQUIRING
PLAINTIFF TO POST AN
UNDERTAKING PURSUANT
TO CALIFORNIA CIVIL
PROCEDURE CODE § 1030
(ECF 43)**

Date: January 25, 2013
Time: 9:30 a.m.
Courtroom: 7

I. Introduction

Plaintiff’s oppositions in this case have made its true intent clear and obvious to all but the most inobservant: Plaintiff seeks to unmask the politically vulnerable sources Defendant Weican “Watson” Null Meng (“Meng,” or the “Defendant”) and Boxun News used to gather and report unflattering – but true – information about her. Plaintiff now seeks to stick Meng with the bill for this litigation even if he prevails under California’s Anti-SLAPP statute. That result cannot stand.

Boxun's reporters have previously been imprisoned in China in connection with their assistance of the site (ECF 21-1 ¶¶ 14-17). China has imprisoned others not affiliated with Boxun News for doing the same, under the pretenses of punishing them for the disclosure of ill-defined "state secrets." (ECF 21-3 ¶¶ 21-27) Using Plaintiff as a proxy, the Chinese Central Communist Party seeks to strike again, using the American courts to discover the identities of those who dared to speak out about the corruption of Bo Xilai – including his sexual affairs (ECF 21-1 ¶¶ 7-21).

Despite the irrelevance of the information, Plaintiff's counsel sought the identities of these individuals in vain over nearly half of one year in discovery (ECF 30, 34, 38, 42), and still intends to obtain their identities if the case continues (ECF 53 ¶ 11). In this quest, Plaintiff has left Meng with a sizable legal bill that she, a Chinese citizen, may skip out on paying despite any judgment this Court enters against her (ECF 43-2 ¶¶ 9-14).¹

The fee-shifting provisions of California Civil Procedure Code 425.16(c) are intended to deter litigation filed in retaliation for one's exercise of his or her First Amendment rights. Further, even if the SLAPP motion is denied, it will not be the only avenue for recovering legal fees. Without assurances that Plaintiff can satisfy Meng's possible award of attorneys' fees and costs under this section, California's Anti-SLAPP statute and other remedial measures will be rendered toothless, and its purpose defeated. As Meng has satisfied the requirements of California Civil Procedure Code § 1030, Plaintiff must post an appropriate bond in order to proceed in the case.

¹ Plaintiff contends that Meng's concerns are unfounded because the Court can order her to pay any attorneys' fees and costs Meng recovers in this action (ECF 46 at 2:13-14). This is an overly optimistic view of judgment enforcement, to the point of glibness; if Courts were capable of simply ordering non-prevailing parties to pay the fees and costs of the prevailing party where appropriate, there would be no need for the entire body of law dedicated to judgment enforcement to exist.

1 **II. Argument**

2 Meng has satisfied all conditions requisite for this Court to order Plaintiff to
3 post a bond for his reasonable attorneys' fees and costs. Even if this Court considers
4 factors beyond those enumerated in § 1030, the equities tip in favor of Plaintiff, a
5 fantastically wealthy entertainer, posting a bond for some portion of Meng's
6 substantial and growing expenses reasonably incurred in defending this action –
7 expenses that have ballooned due to the Plaintiff's wasteful and abusive litigation
8 tactics.

9 **a. Meng Satisfied this Court's Standard for Requiring Plaintiff to
10 Post an Undertaking Sufficient to Satisfy his Attorneys' Fees and
11 Costs.**

12 Federal courts regularly require plaintiffs who are not California residents to
13 post bonds when litigating in California and defendants satisfy the requirements of §
14 1030. *Pittman v. Avish Partnership*, Case No. CV 10-1390 2011 WL at 9160942 *2
15 (C.D. Cal. June 2, 2011); *Gabriel Technologies Corp. v. Qualcomm, Inc.*, Case No.
16 08-CV-1992 2010 WL 3718848 at *1 (S.D. Cal. Sept. 20, 2010) (requiring posting
17 of \$800,000 bond); *see BigFix Asia PTE Ltd. v. BigFix, Inc.*, Case No. C 08-4023
2009 WL 1528184 at *1 (N.D. Cal. May 29, 2009).

18 To meet the standards of § 1030, Meng must only show that Plaintiff is not a
19 resident of California, and that he enjoys at least a reasonable possibility of
20 obtaining judgment in his favor in the case. The first prong of § 1030 is not in
21 dispute and admitted by Plaintiff. (ECF 1 ¶ 2) The second prong of § 1030,
22 requiring Meng to show a reasonable possibility of obtaining judgment, is addressed
23 within his Special Motion to Strike (ECF 21) and reply briefing in support thereof,
24 filed contemporaneously with this brief. The evidence contained therein, and
25 incorporated herein by reference in order to prevent duplicative argument,
26 demonstrates that Meng enjoys at least a “reasonable possibility” of obtaining
27 judgment in his favor in this litigation as required by § 1030(b) (emphasis added).
28

Gabriel Technologies, 2010 WL 3718848 at *5 (observing that defendants need only show a reasonable possibility of obtaining judgment in their favor to obtain an order directing Plaintiff to post a bond, a standard with a low evidentiary threshold).

b. Plaintiff's Rationalizations for Refusing to Post a Bond are Unavailing.

- i. Meng's § 1030 Motion Will Not be Moot Regardless of the Special Motion to Strike's Outcome.

Contrary to Plaintiff's claims, this motion will not be moot following the January 25, 2013 hearing on Meng's pending Special Motion to Strike (ECF 21). Plaintiff's opposition presumes that the Court will decide Meng's Special Motion to Strike on the very day of the hearing. This is not necessarily the case, as a decision and order may take weeks or even months to follow in light of the amount of evidence presented in this case and its unique procedural posture. During that time, Meng maintains a reasonable possibility of recovering his attorneys' fees and costs pursuant to his Special Motion to Strike.

Even if the Court denies Meng’s Special Motion to Strike, this does not extinguish his reasonable possibility of obtaining judgment for his attorneys’ fees and costs against Plaintiff. When a Court denies a motion brought under California Civil Procedure Code § 425.16, that order is immediately appealable. *Batzel v. Smith*, 333 F.3d 1018, 1024 (9th Cir. 2003); *Zamani v. Carnes*, 491 F.3d 990, 994 (9th Cir. 2007). During such an appeal, the instant action will remain pending, with the possibility of its order being reversed or vacated – leaving the door open for Meng to obtain judgment against Plaintiff for his costs and attorneys’ fees following appeal.

Even if the Court denies Meng’s Special Motion to Strike, his reasonable possibility of prevailing in the action is not extinguished. Under § 1030(b), Meng must show only that he has a reasonable possibility of obtaining a judgment against Plaintiff. This judgment may come following summary judgment or even after trial.

Finally, if the Court wishes to act to diminish its docket work load, Meng proposes that the Court continue the hearing on the Anti-SLAPP motion for thirty (30) days after ruling on the 1030 motion, or that the Court vacate the hearing on the 1030 motion, imposing a security requirement immediately. Given the legal anemia from which the Plaintiff's case suffers, Meng posits that the Plaintiff will allow the case to drop rather than post an undertaking. So long as the reasonable possibility of obtaining judgment against Plaintiff exists, Meng is entitled to have his potential recovery of attorneys' fees and costs secured by Plaintiff, who is not a resident of California, and who has shown no collectable assets in California.

ii. The Ninth Circuit's Factors Favor Meng, To The Extent They Are Applicable In This Case.

Meng's desire for security is no "toll-booth" standing between Plaintiff and this Court. To the contrary, Plaintiff has imposed significant costs and hardship on Plaintiff in the form of extensive post-motion discovery in advance of the hearing on Meng's Special Motion to Strike. As Meng has a reasonable possibility of prevailing on that motion for the reasons explained within its reply brief and the present motion (ECF 43) – against a non-resident of the United States, no less – he wishes to ensure he is not left holding the bag with tens of thousands of dollars in attorneys' fees and costs.

The three factors Plaintiff identifies from *Simulnet East Associates v. Ramada Hotel Operating Company* originate in a case concerning a bond requirement originating under Nevada law. 37 F.3d 573, 576 (9th Cir. 1994). These factors, borrowed from the United States Court of Appeals for the First Circuit, include "(i) the degree of probability/improbability of success on the merits, and the background and purpose of the suit; (ii) the reasonable extent of the security to be posted, if any, viewed from the defendant's perspective; and (iii) the reasonable extent of the security to be posted, if any, viewed from the nondomiciliary plaintiff's perspective." *Aggarwal v. Ponce Sch. of Medicine*, 745 F.2d 723, 727-28 (1st Cir.

1 1984). Plaintiff relies on a lone unpublished decision in extending these factors to
 2 the instant dispute in addition to the requirements within California Civil Procedure
 3 Code § 1030. *Susilo v. Wells Fargo Bank, N.A.*, Case No. CV 11-1814 (PJWx) 2012
 4 *WL 5896577* at *1 (C.D. Cal. Nov. 19, 2012).² Because the *Simulnet* case pertained
 5 to a specific Nevada statute, rather than § 1030, it is inapposite to this case. The
 6 three-factor standard Plaintiff contends should be applied, in addition to the
 7 requirements of § 1030, should be disregarded. The Plaintiff's argument is frivolous
 8 and misleading.

9 Assuming that the factors enunciated in *Simulnet* were to apply to this case,
 10 they weigh in favor of requiring Plaintiff to post a substantial undertaking with the
 11 Court. First, Meng has a reasonable possibility of success on the merits in the case,
 12 which is all that is required under California Civil Procedure Code § 1030(b). If
 13 more likelihood is required, the evidence Meng has adduced in support of his
 14 Special Motion to Strike (see ECF 39, 43-6 through 43-10) increase the likelihood
 15 he will ultimately prevail in this action even if he were to not prevail on his Special
 16 Motion to Strike. As more evidence is adduced, it will comport with that on record
 17 and show how Meng did not act with actual malice, and that his expression on the
 18 Boxun news website was constitutionally protected. Additionally, the "background
 19 and purpose" of the suit has been demonstrated repeatedly by Plaintiff's conduct and
 20 filings with the Court: To litigate Meng into submission so that he is forced to reveal
 21 his sources (see ECF 53 ¶ 11), so that the Central Communist Party may retaliate
 22 against them for embarrassing China, just as they have with other journalists (ECF
 23 21-1 ¶¶ 14-17, 21-3 ¶¶ 21-27). Given the substantial attorneys' fees and costs this

23 ² It is also ironic for Plaintiffs to rely on *Susilo* because it represents the converse
 24 situation of this case. In *Susilo*, a defendant with considerable resources sought a
 25 bond from a less formidable plaintiff who sought to prevent the allegedly unlawful
 26 foreclosure of her home. 2012 *WL 5896577* at *1-2. In this case, a wealthy Plaintiff
 27 seeks to avoid payment of a bond to a less wealthy defendant who seeks to vindicate
 his First Amendment rights under a statute that should allow him to recover his costs
 and attorneys' fees for successfully defending his right to free speech.

1 process has imposed and continues to impose upon Meng, Plaintiff's security for
2 these amounts is appropriate.

3 Second, Plaintiff's security to be posted from the Defendant's perspective
4 should cover his attorneys' fees and costs to date plus anticipated costs and fees.
5 These expenditures shall only rise as litigation progresses. As explained in Section
6 II C, the attorneys' fees and costs Meng has incurred thus far have been reasonable
7 and, in light of Plaintiff's conduct and extensive discovery, necessary.

8 Third, any reasonable security this Court requires Plaintiff to post shall not
9 present a hardship or burden to Plaintiff. By Plaintiff's own representations, she is a
10 very successful entertainer (ECF 1 ¶¶ 1, 8-9). Her appearance fee for a three-hour
11 event is 1,000,000 RMB (approximately \$160,676 in American currency, as
12 reported by Google's currency converter on January 9, 2013)(ECF 51 at 6-7). Even
13 if the Court ordered Plaintiff to pay the full \$200,000 Meng seeks as a bond in this
14 action, this would – by Plaintiff's own evidence and admissions – not pose any
15 hardship upon her. To the contrary, such an undertaking would be reasonable, fair,
16 and well within her financial means while preserving the legal rights of Meng as a
defendant in this action, which she commenced.

17 Finally, Plaintiff seeks for Meng to satisfy conditions that are impossible
18 without discovery in order to obtain security under § 1030. Without the benefit of
19 discovery, Meng does not have knowledge as the defendant in this action of
20 Plaintiff's business and personal assets within California beyond her vague
21 representations to the Court about having an "office" within California, and claims
22 that Meng has not shown she does not have attachable assets within California
23 (while refusing to do so herself). Furthermore, nothing in § 1030 excuses an out of
24 state plaintiff on the grounds that she may have assets in California. All that is
25 required is a reasonable possibility of success and an out of state plaintiff. Plaintiff
26 has had an illustrious entertainment career with films grossing hundreds of millions
27 of dollars, and is well-equipped to post a sufficient undertaking with the Court on

1 that basis.³ Simultaneously, Meng has produced evidence that his ability to collect
 2 any award of attorneys' fees and costs against Plaintiff within China, where she
 3 resides and is a citizen (ECF 43-2 ¶¶ 6-10).

4 Plaintiff's only potential defense to Meng's request for a bond in this case,
 5 indigence, is not addressed in her opposition. *Pittman*, 2011 WL at 9160942 *2,
 6 citing *Baltayan v. Getemyan*, 90 Cal.App.4th 1427, 1433-34 (Cal. Ct. App. 2004).
 7 California's public policy governing bonds under § 1030 is that "access triumphs
 8 comfort" in cases of indigency. *Baltayan*, 90 Cal.App.4th at 1442 (Johnson J.,
 9 concurring). In *Pittman*, the plaintiff - a Tennessee resident – was unable to
 10 establish her indigence and show that defendants had a reasonable possibility of
 11 obtaining judgment in their favor. 2011 WL at 9160942 at *2. The court therefore
 12 denied a waiver from posting a bond for the defendant's attorneys' fees under §
 13 1030. *Id.* Similarly, where Plaintiff in this case has been unable to demonstrate
 14 Meng lacks a reasonable possibility of obtaining judgment in his favor, and has
 15 belied any claim of indigence she may have been able to make, Meng is entitled to
 16 an order requiring Plaintiff to post an appropriate undertaking with the Court. (ECF
 17 1 ¶¶ 1, 8-9, 51 at 6-7)

17 iii. Meng's Request for Bond is Reasonable.

18 Plaintiff's opposition to the reasonableness of Meng's incurred and
 19 anticipated attorneys' fees is flawed on two grounds. First, Plaintiff faults Meng for
 20 not producing evidence concerning his legal fees that is not required anywhere
 21 within § 1030. Second, Plaintiff's objection to the hours Meng's counsel has spent
 22 on this case and resulting attorneys' fees is a causal consequence of Plaintiff's
 23 conduct. It is unseemly, if not disingenuous, for Plaintiff to extend this case's
 24 progress again and again to conduct more discovery (ECF 30, 34, 38, 42) and then

25
 26 ³ Despite obliquely suggesting that the Plaintiff has assets in California, the Plaintiff
 27 cheekily declines to reveal what they are, or whether they are sheltered in trust or
 some corporate form.

1 complain that Meng wishes to secure his potential entitlement to recover the
 2 attorneys' fees and costs incurred in doing so.

3 The plain language of § 1030(b) requires only that a motion for security be
 4 supported by an affidavit that:

5 shall set forth the nature and amount of the attorney's fees the
 6 defendant has incurred and expects to incur by the conclusion of the
 7 action or special proceeding. Cal. Civ. P. Code § 1030(b).

8 Meng satisfied this condition with his affidavit (ECF 43-2 ¶¶ 11-14). Despite what
 9 Plaintiff would lead the Court to believe, there is no requirement for Meng to submit
 10 redacted bills, invoices, or any documentation at all. Similarly, it is a matter of
 11 public record that courts across the country previously found Randazza Legal
 12 Group's rates to be reasonable. *Liberty Media Holdings LLC v. FF Magnat Limited*,
 13 Case No. 2:12-cv-01057 2012 WL at 3834744 *1 (D. Nev. Sept. 4, 2012); *Liberty*
 14 *Media Holdings LLC v. Vinigay.com*, Case No. 2:11-cv-280 2011 WL 7430062 at *
 15 15-16 (D. Ariz. Dec. 28, 2011); *Io Group Inc. v. GLBT Ltd.*, Case No. C-10-1282
 16 2011 WL 4974337 at *1 (N.D. Cal. Oct. 19, 2011). In light of these prior decisions,
 17 the reasonableness of fees incurred by Meng's counsel should not be in
 18 consideration.

19 Plaintiff's incredulity regarding the amount of time Meng's counsel has
 20 expended in this action should also be disregarded. Meng filed his motion to
 21 dismiss under Fed. R. Civ. P. 12(b)(2) and Special Motion to Strike in August 2012
 22 (ECF 18, 21). In the intervening five months, Plaintiff has conducted extensive
 23 discovery on Meng and his experts, which has required the involvement of Meng's
 24 counsel in responding to Plaintiff's request, coordinating and attending half-a-dozen
 25 depositions, and otherwise responding to this litigation (ECF 30, 34, 38, 42, 43-6-
 26 43-10, 49-2-49-5). Furthermore, the Plaintiff argues that an anti-SLAPP motion
 27 should take 50 hours to complete. This may be the case in a state court proceeding,
 28 where § 425.16(g) stops discovery and motion practice in its tracks – thus making

1 cost-abusive practices, like those engaged in by the Plaintiff, an impossibility. In
 2 this case, the Plaintiff has deposed Meng three times, and taken three expert
 3 depositions,⁴ as well as compelling unnecessary motion practice (*see* ECF 43). In
 4 consideration of Plaintiff's conduct, it should not be surprising that Meng's counsel
 5 expended approximately 300 hours during the approximately six months they have
 6 been retained in this matter. If Plaintiff considers Meng's counsel's expenditure of
 7 time unreasonable, it is merely in response to Plaintiff's own unreasonable conduct.

III. Conclusion

Meng has demonstrated his entitlement to an order directing Plaintiff to post
 adequate security for his attorneys' fees and costs with the Court in this action.
 Plaintiff is not a resident of California, and Meng has a reasonable possibility of
 prevailing in this action. Additional factors, to the extent they are applicable in this
 action, weigh in favor of Plaintiff securing Meng's attorneys' fees and costs.
 Plaintiff has not shown any right to an exception from the requirements of § 1030,
 and as such must provide Meng with the security to which he is entitled under
 California's Civil Procedure Code.

DATED this 11 day of January, 2013

Respectfully Submitted,

RANDAZZA LEGAL GROUP

/s/ Marc J. Randazza

Marc J. Randazza

Jason A. Fischer

*Attorneys for Defendant,
 Weican Null Meng*

⁴ All the while unethically hiding its own experts form the Defendant.

CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that I am a representative of Randazza Legal Group and that on this 11 day of January 2013, I caused the document(s) entitled:

**DEFENDANT'S REPLY IN SUPPORT OF MOTION FOR ORDER
REQUIRING PLAINTIFF TO POST AN UNDERTAKING PURSUANT
TO CALIFORNIA CIVIL PROCEDURE CODE § 1030 (ECF 43)**

and all attachments to be served by the Court's CM/ECF system.

/s/ Marc J. Randazza
Marc J. Randazza